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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,220	01/14/2002	J. Randolph Lewis	29488/38131	5743
4743	7590	01/30/2004	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606			SHAPIRO, JEFFERY A	
			ART UNIT	PAPER NUMBER
			3653	

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/047,220	LEWIS, J. RANDOLPH
	Examiner	Art Unit
	Jeffrey A. Shapiro	3653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM

THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed

- after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 November 2003.
 2b) This action is non-final.
 2a) This action is FINAL.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-38 is/are pending in the application.
 4a) Of the above claim(s) 24-38 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-23 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
 4) Interview Summary (PTO-413) Paper No(s). _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 24-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper

No. 7.

2. Applicant's election with traverse of Group I, directed towards claims 1-23 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that there is no burden on the Examiner and that the inventions are not distinct. This is not found persuasive because Claims 1 and 15, for example, recite "a controller operably coupled to the latch and having a **processor programmed** to generate the release signal to release the latch." None of the other independent claims, such as 24, 27 and 35 recite such limitations. The subject matter recited in these limitations concern control by a processor that is programmed. This is considered data manipulation, and is best found in class 700, subclasses 213-244, which concerns control of article handling apparatus by devices which process data. In other words, "subject matter wherein the data processing system or calculating computer controls, monitors or inspects the manipulation of an item to change its position, orientation, or location." See classification manual, class 700, subclass 213.

The group II, directed towards Claims 24-38, concerns the apparatus, but without data processing. These two groups, as just described, concern two different apparatus/systems, one with and one without a computer control system. Such a

computer control system is not suggested by the word "automatic" or its derivatives, as is recited in Independent Claim 24, for example. The two types of systems are considered substantially different from each other, thereby requiring different searches, and therefore placing extra burden on the Examiner. Therefore, the restriction remains as stated in the previous action. The Examiner will examine the Elected Claims 1-23.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Payson et al (US 5,794,789). Payson discloses the following.

As described in Claims 1 and 15;

1. a bin (43) having a receiving end adapted to receive articles and a discharge end, the bin having a dump mode, in which articles in the bin are discharged from the discharge end onto the collection area, and
2. a pick mode (32 and 33), in which articles are retained in the bin, the bin being biased under force of gravity toward the dump mode;

3. a releasable latch positioned to retain the bin in the pick mode against the force of gravity, the latch being responsive to a release signal to release the bin;
4. a controller (8) operably coupled to the latch and having a processor programmed to generate the release signal to release the latch,
5. wherein the bin automatically switches from the pick mode to the dump mode under the force of gravity thereby to discharge articles in the bin onto the collection area;

5. Claims 1-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al (US 6,208,908). Payson discloses the following.

As described in Claims 1 and 15;

1. a bin (12) having a receiving end adapted to receive articles and a discharge end, the bin having a dump mode, in which articles in the bin are discharged from the discharge end onto the collection area, and
2. a pick mode, in which articles are retained in the bin, the bin being biased under force of gravity toward the dump mode;
3. a releasable latch (52) positioned to retain the bin in the pick mode against the force of gravity, the latch being responsive to a release signal to release the bin (see col. 5, lines11-23);
4. a controller (18) operably coupled to the latch and having a processor programmed to generate the release signal to release the latch,

5. wherein the bin automatically switches from the pick mode to the dump mode under the force of gravity thereby to discharge articles in the bin onto the collection area (see abstract);

As described in Claims 2 and 16;

6. the releasable latch comprises an electromagnet; (Note that Boyd's latch mechanism is considered to be a functional equivalent to Applicant's. See col. 7, lines 19-35.)

As described in Claims 3 and 19;

7. the processor is programmed to assign pick orders to the dumping station (see col. 7, lines 35-67 and col. 8, lines 1-36);

As described in Claims 4 and 20;

8. the collection areas comprises a conveyor, and the processor is programmed to generate the release signal as a selected area of the conveyor passes the dumping station (see col. 3, lines 65-67 and col. 4, lines 1-19, noting that moving the dumping apparatus along the conveyor or moving the conveyor along towards a stationary dumping apparatus is considered to be functional equivalents of each other);

As described in Claims 5 and 23;

9. a status indicator attached to the bin near the receiving end, the status indicator being movable between an active position, to provide a visual indication that more articles are to be placed in the bin, and an inactive position, to provide a visual indication that no more articles are to

be placed in the bin (see figure 8 and operation box (112) as well as col. 9, lines 5-10);

As described in Claims 6, 15 and 21;

10. a support shaft, wherein the bin is pivotally mounted on the support shaft, the bin having a center of gravity laterally offset from the support shaft so that the bin is biased to a dump position corresponding to the bin dump mode, the bin being rotatable to a pick position corresponding to the bin pick mode (see col. 4, lines 9-17 and col. 7, lines 25-35, noting that Applicant's dump mechanism, pivotally mounted, is construed to be amongst the numerous methods well-known to those ordinarily skilled in the art to accomplish discharging of articles);

As described in Claims 7 and 22;

11. a weight is attached to the bin near the discharge end to laterally shift the center of gravity of the bin toward the discharge end (see col. 7, lines 25-35);

As described in Claims 8 and 17;

12. a dump pedestal positioned to engage the bin in the dump position, and a pick pedestal positioned to engage the bin in the pick position, the pick pedestal carrying the releasable latch (see col. 7, lines 25-35);

As described in Claims 9 and 18;

13. the dump pedestal is oriented to direct articles onto the collection area (see col. 7, lines 25-35);

As described in Claim 10;

14. an inclined bottom wall so that the discharge end is positioned below the receiving end;
15. a rear flap pivotally attached to the bin and movable between a closed position, in which the rear flap closes off the receive end, and an open position, in which the rear flap is rotated away from the receive end;
16. a front flap having a lower mass than the rear flap pivotally attached to the bin and movable between a closed position, in which the front flap closes off the discharge end and engages the releasable latch, an open position, in which the front flap is rotated away from the discharge end;
17. a cable connecting the front flap to the rear flap to the rear flap so that the front flap is the open position when the rear flap is in the closed position and the front flap is in the closed position when the rear flap is in the open position;
18. wherein the bin is in the pick mode when the rear flap is manually placed in the open position and the front flap is held in the closed position by the releasable latch against the force of gravity acting on the open rear flap, and is switched to the dump mode when the latch is released, thereby allowing the force of gravity to pull the rear flap to the closed position and the front flap to the open position;

(See previous discussion and citations above and figures 1-5.)

As described in Claims 11 and 15;

19. the bin includes a hinged bottom wall movable between a closed position, in which the bottom wall closes off the bin discharge end and is held in place by the releasable latch against the force of gravity, and an open position, in which the bottom wall is rotated away from the discharge end, wherein the bin is in the pick mode when the bottom wall is manually placed in the closed position, and is switched to the dump mode when the latch is released, thereby allowing the force of gravity to pull the bottom wall to the open position;

(See previous discussion and citations above.)

As described in Claim 12;

20. the bottom wall is inclined and the receive end is formed at a rear face of the bin;

(See previous discussion and citations above.)

As described in Claim 13;

21. the bottom wall is substantially horizontal and the receive end is formed at a top face of the bin;

(See previous discussion and citations above.)

As described in Claim 14;

22. the bin is manually placed in the pick mode;

(See previous discussion and citations above.)

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone number for the organization where this application or proceeding is assigned is (703)306-4195.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Jeffrey A. Shapiro
Examiner
Art Unit 3653

January 26, 2004



DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
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